IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLN.NO.13 OF 2007
(LEAVE TO APPEAL)
IN
CRI.APPEAL NO. OF 2006
IN
CASE NO.667/SS OF 2004

M/s.Bishan Steel Industries ..Applicant
Vs.
Prakash Singh & Ors. ..Respondents

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M/s.Vyas and Bhalwal for Applicant
Mrs.M.M.Deshmukh A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 27, 2007

P.C.

1. Heard the learned counsel for the applicant and the learned A.P.P. for the State.

2. Being aggrieved by the judgment and order of acquittal dated 29.9.2006 passed by the learned Metropolitan Magistrate, 31st Court, Vikroli Mumbai in C.C.No.667/SS/2004, this application for leave to appeal, has been preferred. By the said judgment and order, the learned Magistrate acquitted the respondent-accused under Section 138 of Negotiable Instruments Act.

3. It is the case of the complainant that two cheques for Rs.31,562/- and Rs.41,562/- were issued

by the accused to him. So far as giving of cheques by the accused to the complainant towards the supply of goods as per the purchase order dated 2.6.2004 is concerned, there is no dispute. It is also not in dispute that the goods were delivered under delivery Chalan Nos. 98, 99 and 100 dated 28.6.2004 were received by the accused. However, it is seen that delivery Chalan nos. 98, 99 and 100 were not as per the purchase orders dated 2.6.2004. The complainant's witness Sunil Kumar Mishra has admitted in his cross-examination that there was no order of Base Plate (200 pieces and Casting Prop.Nut) (100 pieces) as disclosed in the Invoice No.98; 50 NB M.S.P. PC 685.2 ft. and 40 NB M.S.P. PC 609 ft. as mentioned in invoice No. 99 and H.R. Plate 150 kg. as reflected in Invoice 100. Thus, this shows that the goods supplied under these Chalans were not as per the purchase order given by the accused. In such case, the respondent-accused cannot be said to be liable to pay to the complainant the amounts relating to these delivery challans. As the requirements as per purchase order dated 2.6.2004 was not complied, the accused was not liable to make any payment for the same. The learned Magistrate has acquitted the

respondent-accused on the basis of these facts. In this view of the matter, I am of the opinion that the view taken by the learned Special Judge is a reasonable and possible view.

5. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Special Judge is a reasonable and possible view, hence, no interference is called for.

6. In this view of the matter, application for leave to appeal is rejected.

[V.K.Tahilramani, J.]